

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAWAN TYNER,

Defendant-Appellant.

UNPUBLISHED

June 5, 2014

No. 309729

Wayne Circuit Court

LC No. 06-007375-FC

Before: M. J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

FORT HOOD, J. (dissenting).

I respectfully dissent.

Defendant's motion for new trial alleged there was newly discovered evidence. The trial court's decision to grant a motion for a new trial rests in the sound discretion of the trial court and will not be disturbed without a showing of an abuse of discretion. *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *People v Buie*, 491 Mich 294, 320; 817 NW2d 33 (2012). To warrant a new trial premised on newly discovered evidence, the defendant must establish: (1) the evidence itself, not merely its pertinency, was newly discovered; (2) the newly discovered evidence was not accumulative to evidence presented at trial; (3) a party could not, using reasonable diligence, have discovered and presented the evidence at trial; and (4) a different result is probable on retrial with the admission of the newly discovered evidence. *People v Rao*, 491 Mich 271, 279; 815 NW2d 105 (2012) (citation omitted).

/s/ Karen M. Fort Hood